

INTERGOVERNMENTAL AGREEMENT

107577

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT ("Agreement") is entered into March 22, 2004 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, ARIZONA acting by and through its CITY MANAGER (the "City").

I. DEFINITIONS

"Accelerated Construction Schedule" means the Advance Plan of Construction of the multiple phases of existing Interstate 10 (I-10) and Interstate 17 (I-17) Freeways to be constructed with Asphalt Rubberized Friction Course ("ARFC") surfacing (hereinafter referred to as "Rubberized Asphalt"), shown on Exhibit "A," attached hereto and made a part hereof.

"Agreement" means this intergovernmental agreement for the Project, as the same may be amended or supplemented from time to time.

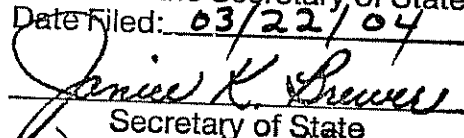
"Business Day" means any day on which City and State offices are open for business.

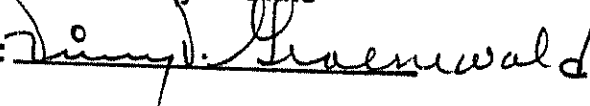
"City" means the City of Phoenix, Arizona.

"City Loan" means those funds to be advanced by the City to the State, for the sole purpose of accelerating construction of the Rubberized Asphalt along portions of the I-10, and I-17, Freeways in the amount of \$3,200,000.00 for Phase 2 in Fiscal Year ("FY") 2004 and \$5,400,000.00 for Phase 3 in FY 2005 for a total amount not to exceed \$8,600,000.00 without the written consent of the City for the Projects as shown on Exhibit A.

"City Loan Account" means the interest bearing account established by the City with the State Treasurer's Local Government Investment Pool and containing monies funded by the City for the City Loan, Investment Interest, and any other funds provided by the City for the Projects.

"Department" means the Arizona Department of Transportation.

NO. 26729
Filed with the Secretary of State
Date Filed: 03/22/04

Secretary of State

By: 

"Investment Interest" means interest earnings resulting from the investment of the unused portion of the City Loan while such funds are held in the City Loan Account. All such Investment Interest shall remain in the City Loan Account and shall solely be applied to the construction costs of the Projects or repaid to the City as set forth in this Agreement.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Project" or "Projects" means Phases 2 and 3 of those segments of the existing I-10 and I-17 Freeways located within the City, to be designed and constructed with Rubberized Asphalt, to applicable State standards and specifications, as shown on Exhibit A.

"State" means the State of Arizona acting by and through the Department.

"State's Fiscal Year" means the fiscal year, which begins on July 1st and ends on June 30th of the following year.

"State Program Funds" means the funding the State has programmed in FYs 2005 and 2006, established or part of the Printed 2004-2008 Five Year Construction Program for construction of the Projects.

"State Transportation Board" or "Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 and following.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes, Sections 28-401 and 28-7677 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the State.

2. The City is authorized by Chapter II, Section 2(i) of the Phoenix City Charter to enter into this Agreement and has by Resolution (attached hereto and made a part hereof) authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has programmed funding in the Printed FY 2004-2008 Five Year Construction Program, for the construction of Rubberized Asphalt for Phases 2 and 3 along portions of existing I-10 and I-17 Freeways, located within the City, herein referred to as the "Project or Projects". Work is scheduled to begin in the spring of 2004 and be completed in the fall of 2005, in accordance with the Accelerated Project Schedule shown on Exhibit A and whose terms are incorporated into this Agreement by reference.

4. The City desires the acceleration of construction of the Projects and agrees to provide or cause to be provided to the State, the City Loan in the amount of \$3,200,000.00 for accelerating the construction of Phase 2 in FY 2004 and \$5,400,000.00 for accelerating the construction of Phase 3 in FY 2005, a total amount not to exceed \$8,600,000.00 without the written consent of the City for the Projects shown on Exhibit A.

5. The State agrees to repay the funds drawn from the City Loan Account; Investment Interest earned and any other funds provided by the City, used for accelerating the construction of the Projects, to be completed in accordance with the Accelerated Project Schedule, shown on Exhibit A.

6. The Parties hereto agree and acknowledge to the following conditions: 1) the amounts referenced in this Agreement are subject to change; 2) the estimated amounts may change substantially; and 3) the Parties will perform their responsibilities consistent with this Agreement.

NOW, THEREFORE, in consideration of the conditions expressed herein, it is agreed as follows:

III. SCOPE OF WORK

1. The State will:

a. Use its best efforts to accelerate and prepare to State Standards, the design plans, specifications and such other documents and services necessary for the advertising and construction of the Projects, to meet the Accelerated Project Schedule, shown on Exhibit A.

b. Use its best efforts to design the Projects in accordance with the Accelerated Construction Schedule and provide the City with copies of each of the Project's plans at 60% and 95% completion for review and comment.

c. Prior to advertising for bids, provide the City with a construction cost estimate for each of the Project's referenced herein, based on 100% complete plans, for the City's concurrence.

d. Upon receipt of written confirmation by the City of the construction cost estimate, call for bids. Provide the City with the Project's award amount for the City's written concurrence, prior to recommending award of each construction contract, in the event the actual amount of award is greater than the City's proposed funding for each of the Projects, referenced in II.4 above.

e. Should the City withdraw its plan to fund the accelerated construction of the Projects, the State will not be obligated to proceed with the Projects as stated in this Agreement.

f. Upon receipt of written confirmation by the City to fund the Project(s), use its best efforts to recommend to the State Transportation Board that it award one or more construction contracts for the Projects and use its best efforts to issue a notice of award to the contractor within fifteen (15) business days of award of the construction contract by the State Transportation Board.

g. Administer the construction of the Projects and make all payments to the contractors. Be responsible for any contractor claims for extra compensation attributable to the State.

h. Upon concurrence by the City, open bids for Phase and Phase 3, respectively and use its best efforts to accelerate construction of the Projects to meet the construction schedule on Exhibit A.

i. Draw against the City Loan Account as necessary to make monthly contractor payments associated with each phase of the Projects.

j. Provide the City with a monthly report showing the progress of the Projects draws against the City Loan Account.

k. Agree the proceeds the from the City Loan; Investment Interest earned on the balance in the City Loan Account; and any other funds provided by the City will be used by the State solely to pay the cost of the accelerating construction of the Projects on a schedule as near as possible to the Accelerated Construction Schedule and to be completed in accordance with the Accelerated Project Schedule, shown on Exhibit A.

l. Provide a written explanation to the City, as justification for higher costs, if the final construction costs or low bid amount are more than the estimated \$325,000.00 per mile for any Project identified in Exhibit A.

m. Repay the funds advanced by the City through the City Loan, Investment Interest earned and any other funds provided by the City and used for the Projects on or before July 31, 2005.

n. Within 30 days of completion of the Projects, unless otherwise agreed to by the City in writing, remit to the City any remaining balance of the City Loan Account including, but not limited to, the City Loan, any Investment Interest earned and any other funds provided by the City and used for the acceleration of construction of the Projects.

2. The City will:

a. Use its best efforts to review and provide comments on the Project plans at 60% and 95% completion within 10 business days of the City's receipt of the plans from the State.

b. Upon execution of this agreement and receipt of an invoice from the State, establish the City Loan Account with an amount equal to \$3,200,000.00 for accelerating the construction of Phase 2 in FY 2004 and upon receipt of an invoice from the State, make a deposit with an amount equal to \$5,400,000.00 for Phase 3 in FY 2005, based on the estimates outlined on Exhibit A, prior to Bid Opening of each respective Project by the State's Contract and Specification's office.

c. Authorize the State to be the sole signature on said City Loan Account.

d. Within 5 business days from receipt of the construction cost estimate, provide the State written confirmation of such construction cost estimate.

e. Within 5 business days from receipt of the award amount of the Project, provide the State written confirmation of such award amount.

f. Should the construction bid amount be greater than the City's deposits, the City will deposit the difference between the initial deposit and the construction bid amount 5 business days prior to the start of construction.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall become effective upon filing with the Secretary of State.

2. This Agreement shall remain in force and effect until the Projects are completed and the State has repaid in full the City Loan, Investment Interest earned and any other funds provided by the City, and used for accelerating construction of the Projects. Either Party may terminate this Agreement at any time prior to the advertisement for bids for each Phase of the Projects, upon 30 days written notice to the other Party.

3. This Agreement may be amended only upon written consent by the appropriate authorities hereto.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes, Section 38-511.

5. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes, Section 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person, sent by facsimile transmission or deposited in the United States mail, postage prepaid addressed as follows:

To the State:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
Fax: (602) 712-7424

With copy to:

Arizona Department of Transportation
Roadway Design Group
Attn: Project Manager
205 S. 17th Avenue, Mail Drop 615E
Phoenix, Arizona 85007

To the City:

City of Phoenix
Street Transportation Director
200 West Washington Street, 5th Floor
Phoenix, AZ 85003-1611
Fax: (602) 495-2016

With copy to:

City of Phoenix
Street Transportation Department
Attn: Ray Dovalina
200 W. Washington, 5th Floor
Phoenix, Arizona 85003

7. Notice shall be deemed received at the time it is actually received. Either Party may change its mailing address, fax number or the person to receive notice by notifying the other Party as provided in this section.

8. This Agreement together with the exhibits attached represent the entire agreement between the Parties and supercedes or replaces all prior letters, correspondence, communication, negotiations, agreements or proposed agreements written or oral. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Parties, and all amendments hereto must be in writing and signed by appropriate authorities hereto.

9. Except as otherwise provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of such rights or remedies, or deprive any such Party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10. For the purpose of any of the provisions of this Agreement, neither the State nor the City, as the case may be, shall be considered in breach of or in default of its obligations under this Agreement as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, fire, floods, epidemics, strikes, lock outs, freight embargoes and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such enforced delay, the time for performance of the State's and the City's obligations, as the case may be, shall be extended for the period of the enforced delay, provided that the Party seeking the benefit of this provision shall have notified the other Party thereof in writing of the cause or causes thereof, and requested an extension for the period of the enforced delay. If notice by the Party claiming such extension is sent to the other Party more than 30 days after commencement of the cause, the period of delay shall be deemed to commence 30 days prior to the giving of such notice.

11. The City's obligations hereunder do not and shall not constitute indebtedness or pledge of the general credit of the City within the meaning of any constitutional, charter or statutory provision relating to the incurring of indebtedness, nor a pledge of the full faith and credit of the City. The City's obligations hereunder are enforceable exclusively from taxes, fees, charges, and other monies collected by the State and returned to the City for street and highway purposes pursuant to Title 28, Chapter 8, Article 2 of the Arizona Revised Statutes and are subordinate to any bonds issued under Title 48, Chapter 4, Article 5 of the Arizona Revised Statutes. The State shall not have the right to compel the exercise of any taxing power of the City to pay any amounts owed hereunder.

12. Notwithstanding the foregoing, the City may, but shall not be required, to use any other lawfully available funds to satisfy its obligations.

13. Pursuant to Arizona Revised Statutes, Section 11-952D, attached hereto and incorporated herein is the written determination of each Party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CITY OF PHOENIX, a Municipal
Corporation, Frank Fairbanks, City

STATE OF ARIZONA
Department of Transportation

By Thomas E. Callow
THOMAS E. CALLOW, P.E., Director
Street Transportation Department

By Daniel S. Lance
DANIEL S. LANCE, P.E.
Deputy State Engineer

DATE

MARCH 15, 2004
DATE

ATTEST:

By Susan J. Hilde
ACTING City Clerk

RUBBERIZED ASPHALT SURFACING PROPOSED ADVANCED PLAN

Exhibit "A"

Route	Section	Miles	ESTIMATED COSTS	Construction Year	City's Loan Fiscal Year	State's Repayment Fiscal Year
	QUIET PAVEMENT (PHASE 2)					
I-10	17th Ave - Van Buren St.	4	\$3.2	04 Spring	2004	2006
	Subtotal:		\$3.2			
	QUIET PAVEMENT (PHASE 3)					
I-10	67th Ave. - 27th Ave.	5	\$2.4	04 Fall	2005	2006
I-10	Baseline Rd. - Ray Rd.	4	\$1.9	04 Fall	2005	2006
I-17	Greenway Rd. - Utopia Rd.	2.5	\$1.1	04 Fall	2005	2006
	Subtotal:		\$5.4			
	Total:		\$8.6			

APPROVAL OF THE CITY OF PHOENIX ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, among the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 10 day of March, 2004.

Jesse W. Sears
ACTING
MD City Attorney

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

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Complete this form per O.P. 1.906 and A.R. 4.11.

Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action:	OR	Legal Document:
	Bid Award <input type="checkbox"/>		Ordinance <input type="checkbox"/>
	License Application <input type="checkbox"/>		Resolution <input type="checkbox"/>
	Public Hearing <input type="checkbox"/>		Emergency Clause? <input type="checkbox"/>
	Other <input checked="" type="checkbox"/>		(for use only w/ord. or res. requests)
IMPACTED DISTRICT(S)	CITYWIDE	ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER? <input type="checkbox"/>	
SUBJECT	AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - RUBBER ASPHALT PAVING FOR FREEWAYS		
REQUESTED AGENDA DATE	6/25/2003	PREPARED BY	Name J. Donald Herp Department Street Transportation Phone 262-4872
APPROVALS	Division Head:	J. Donald Herp	If prepared for another department: Department Name:
	Department Head:	Thomas E. Callow, P.E.	
			Approval:
BID AWARD INFORMATION	Bid Surety Required? <input type="checkbox"/>	Performance Surety Required <input type="checkbox"/>	
	Submitted by Low Bidder? <input type="checkbox"/>	Amount? _____	
	Contract Required? <input type="checkbox"/>	Requisition No. _____	
CONTRACT INFORMATION	Contract Amendment? <input type="checkbox"/>		
	If Yes, Current Contract No. _____		
	Approved by:	Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Formal Action <input type="checkbox"/>	on Date: _____
BUDGET INFORMATION	\$ _____	To Be Encumbered? <input type="checkbox"/>	
	Source of Funds: _____	Fiscal Year? _____	
	Fund Center(s) (SAP-FM): _____		
	Commitment Item(s) (SAP-FM): _____		
CITY MANAGER'S OFFICE	Approved by Jack Tevlin, Deputy City Manager 6/12/03		CM Control No. 34
CITY CLERK DEPARTMENT	Council Action Taken: Approved		
	Ordinance Number: _____	RCA No.	42383
	Resolution Number: _____	Contract No.	107577
	Comments: _____	Meeting Date	6/25/2003
		Item No.	249

ITEM**CITYWIDE****AGREEMENT WITH ARIZONA
DEPARTMENT OF
TRANSPORTATION - RUBBER
ASPHALT PAVING FOR
FREEWAYS**

Request approval for the City Manager to enter into an intergovernmental agreement with the Arizona Department of Transportation (ADOT), for the funding of an accelerated program of paving existing freeways in the City with rubberized asphalt.

ADOT has developed a \$34 million program to repave existing freeways adjacent to residential areas experiencing high levels of freeway noise. The program would begin in late 2003 and be completed in late 2006.

Under the terms of this agreement, the City would advance about \$8.6 million to ADOT so that paving of the identified freeway segments within the City would be completed in late 2004.

ADOT would repay the funds advanced by the City according to the original schedule for paving.

The cost to the City for borrowing the funds to be advanced to ADOT is estimated to be \$455,000.

Citizen Notification

The City Council Transportation, Aviation, Transit and Technology Subcommittee considered this item at the February 26, 2003 meeting and recommended approval.

The City Council approved entering into this agreement at the March 12, 2003 Formal Session. However, the amount of the City loan was listed as \$7.6 million. The revised ADOT estimate has increased to \$8.6 million. However, the City cost for borrowing the funds to be advanced is still not expected to exceed \$455,000.

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TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

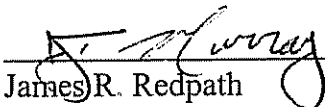
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-0792-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 16 March 2004

Terry Goddard
ATTORNEY GENERAL

 For
James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214